

**REVISED**  
**CHANGES MADE DURING THE BOARD MEETING**

**STATE WATER RESOURCES CONTROL BOARD**  
**BOARD MEETING SESSION – DIVISION OF WATER QUALITY**  
**JANUARY 9, 2018**

**ITEM 2**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR, CHIEF DEPUTY DIRECTOR FOR WATER QUALITY, AND DEPUTY DIRECTOR FOR WATER QUALITY TO ISSUE WASTE DISCHARGE REQUIREMENTS REGARDING THE DISCHARGE OF DREDGED OR FILL MATERIALS

**DISCUSSION**

In order to discharge dredged or fill material into waters of the United States, applicants must obtain a Clean Water Act (CWA) section 404 permit from the U.S. Army Corps of Engineers (Corps) and a section 401 water quality certification (401 certification) from the State Water Board or one of nine Regional Water Quality Control Boards (collectively, Water Boards) verifying that the project will comply with state water quality standards. In California, the Porter-Cologne Act requires that any discharge that could affect the quality of waters of the state, including waters that are not under federal jurisdiction, be permitted through waste discharge requirements (WDRs).

Despite having a similar application process and permitting considerations, the process for issuing dredge or fill permits differs depending on whether the Board is issuing a 401 certification or WDRs. Pursuant to California Code of Regulations, title 23, Section 3838(a), “the Executive Director, or his/her designee, is authorized to take all actions connected with applications for certification, including issuance and denial of certification.” There is no similar explicit delegation for WDRs, so where projects impact non-federal waters of the state, staff must bring proposed WDRs before the State Water Board for adoption at a regularly scheduled Board meeting. This additional process can add two months or more to the time required to issue a dredge or fill permit.

Generally, WDRs for dredged or fill projects are non-controversial. The Board does not generally receive comments on these projects and they are usually adopted on the consent calendar. ~~Thus, the additional process relating to adoption at a public Board Meeting does not appear to improve public input for these types of permits.~~ Delegating authority to approve these permits to the Executive Director would preserve the public’s ability to provide input on proposed WDRs, as the process would continue to require public notice and opportunity to comment. Further, the proposed delegation of authority would require that WDRs of a unique, unusual, or controversial nature be brought to the attention of the State Water Board.

Staff is requesting that the Board considers aligning the processes of issuing WDRs and 401 water quality certifications for dredge or fill activities by delegating approval of WDRs for dredge or fill activities to the Executive Director, the Chief Deputy Director for Water Quality and the Deputy Director for Water Quality.

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**POLICY ISSUE**

Should the Board delegate authority to issue waste discharge requirements for dredge or fill activities to the Executive Director, Chief Deputy Director for Water Quality, and Deputy Director for Water Quality?

**FISCAL IMPACT**

None

**REGIONAL BOARD IMPACT**

None

**STAFF RECOMMENDATION**

Staff recommends that the Board delegates the approval of waste discharge requirements for dredge or fill activities to the Executive Director, the Chief Deputy Director for Water Quality and the Deputy Director for Water Quality.

State Water Board action on this item will assist the Water Boards in reaching 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the water boards to ensure our processes are effective, efficient and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling Objective 6.2, Targeting consistency improvements in program delivery identified through past input, and solicit input to identify consistency issues as they arise.